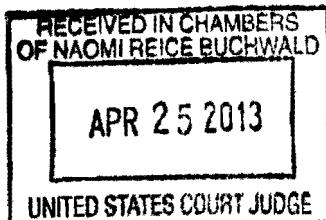




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April 24, 2013



Via Facsimile

Honorable Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *In re LIBOR-Based Financial Instruments Antitrust Litigation*,
Case No. 11-MD-2262 (NRB)

Payne et al. v. Bank of America et al.,
Case No. 1:13-cv-00598-NRB (the "Homeowner Action")

Dear Judge Buchwald:

We are counsel for the Plaintiffs Carl A. Payne and Kenneth Coker (the "Proposed Homeowner Class Plaintiffs") in the above-referenced action (the "Homeowner Action"). Pursuant to your Honor's Individual Practices, we write this letter on behalf of the Proposed Homeowner Class Plaintiffs to request a pre-motion conference with the Court to discuss the following issues:

1. A motion to lift the stay of the Homeowner Action, which was effected by this Court's August 14, 2012 Order, ECF No. 205; and
2. A request for ruling on the Proposed Homeowner Class Plaintiffs' February 28, 2013 application for establishment of a separate putative class group and for appointment of interim class counsel, ECF No. 266.

We will address each of these issues below.

Motion to Lift Stay

On August 14, 2012, this Court issued an Order staying "any actions not subject to defendants' pending motions to dismiss, filed June 29, 2012." ECF No. 205. This stay applied to the Homeowner Action, in which no motion to dismiss had been filed. The Court's Order provided: "The stay will remain in place until the pending motion to dismiss is resolved." *Id.*

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On March 29, 2013, the Court issued its Order on defendants' motions to dismiss. ECF No. 286. Now that the motions to dismiss have been resolved, therefore, the Proposed Homeowner Class Plaintiffs seek leave to file a motion to lift the stay of the Homeowner Action.

The Complaint filed in the Homeowner Action alleges three causes of action: (1) Violations of California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*; (2) Violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c), and; (3) Fraud. The Court's ruling on the motions to dismiss did not directly or indirectly address the claims raised in the Complaint filed by the Proposed Homeowner Class Plaintiffs except for their cause of action under the RICO statutes.

Application for Establishment of Separate Putative Class Group and Appointment of Interim Class Counsel

On February 28, 2013, the Proposed Homeowner Class Plaintiffs filed an application for establishment of a separate putative class group. ECF No. 266. As part of that application, the Proposed Homeowner Class Plaintiffs asked the Court to appoint them as interim lead plaintiffs and their counsel as interim lead class counsel for the Homeowner Class. *Id.*

As more fully explained in the application, the Proposed Homeowner Class is distinct from the existing classes since it includes any and all claims brought on behalf of U.S. residents who obtained LIBOR-based adjustable rate mortgage home loans, which originated during the period March 2007 and March 2011. None of the existing four class groups established in this MDL protect or represent the interests of the Proposed Homeowner Class. In fact, of the existing class groups established by this Court, none concerns individual homeowners who obtained a U.S. Dollar LIBOR-based adjustable rate home loan.

The Proposed Homeowner Class Plaintiffs and their counsel are ready to litigate the claims on behalf of the class, as soon as the Court rules on the application to establish a separate putative class. Accordingly, in connection with their request to lift the stay of the Homeowner Action, the Proposed Homeowner Class Plaintiffs respectfully request that the Court issue a ruling on their application for establishment of a separate putative class group and for appointment of interim class counsel.

In summary, the Proposed Homeowner Class Plaintiffs respectfully request a pre-motion conference for the following purposes:

1. To request permission to file a motion to lift the stay of the Homeowner Action;
2. To request that the Court issue a ruling on their application for establishment of a separate putative class group and for appointment of interim class counsel; and

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3. To discuss and establish a date for the filing by the Proposed Homeowner Class Plaintiffs of an amended complaint and a briefing schedule for Defendants' anticipated motions to dismiss.

We thank the Court for its attention to this matter.

Sincerely,

Baron & Budd, P.C.

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